

September 13, 2004: Afghanistan: Freedom and Electoral Democracy Stifled by Supreme Court Chief Justice

FOR IMMEDIATE RELEASE

September 13, 2004 Contact:

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WASHINGTON - Afghanistan Supreme Court Chief Justice Fazl Hadi Shinwari's call for the disqualification of a presidential candidate in the country's first upcoming Presidential elections since the fall of the Taliban for purported "anti-Islamic remarks" on women's rights and family law reveals that human rights and democracy are still under threat from extremism in Afghanistan. Chief Justice Shinwari not only called for the disqualification of the person's candidacy for President, but also reportedly insisted that prosecutors investigate his "blasphemous remarks." The candidate in question contends that Shinwari does not have the authority to disqualify any presidential candidate; at this time, he remains a candidate. In January of this year, Afghanistan adopted a Constitution that does not include any guarantee of freedom of religion or belief for members of the country's majority Muslim community against unjust accusations of religious "crimes" such as apostasy and blasphemy. Nor, as the Commission has noted in past statements, does the Constitution provide adequate protections for individual rights including freedom of speech. Rather, the Afghan constitution leaves open the possibility - highlighted by this incident - that blasphemy and other religion-based laws can be misused politically to quash dissent. Article 3 of the Constitution states that "no law can be contrary to the beliefs and provisions of Islam." The final authority to determine the conformity of legislation to Islam is granted to the Supreme Court, currently headed by Shinwari. The attempt to have a candidate disqualified on blasphemy charges is one example of the way in which Shinwari, empowered by Article 3, threatens the rule of law and the protection of human rights in Afghanistan. "Unfortunately, the new Afghan Constitution does not ensure that the individual right to freedom of thought, conscience, religion or belief, and the right to freedom of expression, are fully protected. Chief Justice Shinwari's remarks demonstrate that these rights, the system of electoral democracy, and the vitality of political dissent continue to be at risk in Afghanistan. Given the vital importance that these upcoming Presidential elections be fully free and fair, the painful reminder of insufficient constitutional and judicial protections for human rights underscores the necessity for the rule of law within a democracy," said Commission Chair Preeta D. Bansal. "The United States should support the reconstruction in Afghanistan of a judicial sector operating under the rule of law and upholding international standards of human rights." Even before his most recent statement, Chief Justice Shinwari had shown little regard for those who disagree with his hard-line interpretation of Islam. Shinwari told a Commission delegation visiting Afghanistan last year that he rejects three crucial freedoms—those of expression, religion, and equality of sexes—all of which are protected under the Universal Declaration of Human Rights. Last year, a sitting Minister in the interim Afghan government was forced to resign after Chief Justice Shinwari charged her with blasphemy for questioning the role of Islamic law in the new Afghanistan. Journalists have been jailed on charges of offending Islam. And now, Shinwari is attempting to have a candidate disqualified because he disapproves of that candidate's individual views. "All citizens of Afghanistan must be protected from accusations of blasphemy or similar charges and not face prosecution for discussing peacefully the appropriate role of Islam in Afghanistan's political and legal systems or for criticizing specific political figures or political parties, or dissenting from prevailing views and beliefs," Bansal said. "The U.S. government should advise the government of Afghanistan that 'blasphemy'-as interpreted by one person, Chief Justice Shinwari-should not be the basis on which any candidate is disqualified from running for office, lest the specter of judicial theocracy begins to hover in Afghanistan as it does in Iran, where parliamentary and other candidates are routinely disqualified by the Guardian Council, a non-elected body with the power to reject candidates because of their ideological or religious beliefs," Bansal said. Although the new constitution expresses many democratic principles, it does not provide explicit protection for the individual right to freedom of thought, conscience, religion or belief. With no guarantee for all individuals of the right to religious freedom and a judicial system instructed to enforce Islamic principles and Islamic law, the door is open for a harsh, unfair, or even abusive interpretation of religious orthodoxy to be officially imposed, violating numerous rights and potentially stifling political dissent for Muslims and non-Muslims alike. As the Commission learned on its visit to Afghanistan, many Afghani Muslims embrace the compatibility of Islam and human rights. However, extremists silenced these Muslims and others, particularly during the constitution drafting process. The Commission continues to call on the U.S. government to: support respect for the right of every individual to freedom of thought, conscience, religion or belief in post-Taliban Afghanistan, and be prepared to make great efforts to ensure protection of fundamental human rights, including freedom of conscience and the rights of women, as outlined in international human rights instruments to which Afghanistan is a party; use its influence to protect freedom of expression against charges that may be used to stifle debate, such as blasphemy, "offending Islam," apostasy or similar offenses, including expression on sensitive subjects such as the role of religion in society and the rights of women and members of minorities; act to bolster the position of those reformers who respect human rights, since elements in Afghan society who would promote respect for internationally recognized human rights are currently on the defensive—even threatened, and these elements need U.S. support to counter the influence those with an Islamist or extremist agenda; and strongly support the reconstruction in Afghanistan of a judicial sector operating under the rule of law and upholding civil law and international standards of human rights, and work to ensure that: all judges and prosecutors are trained in civil law and international human rights standards; women are recruited into the judiciary at all levels; and all Afghans have equal access to the courts.

Preeta D. Bansal, Chair

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